NEWSLETTER

MAY 2022

EDITOR'S DESK

Mr. Suman Jyoti Khaitan, Founder & CEO of Suman Khaitan & Co., Advocates, New Delhi, an Indian Law Firm is pleased to offer you the newsletter for the month of May 2022 published by the Suman Khaitan & Co.

The newsletter is a compilation of news items, national and international, related to field of Arbitration, Insolvency, Intellectual Property, Competition, Indirect Taxation, Merger & Acquisitions and recent news associated with legal industry.

We heartily thank all the readers for their warm response and welcome your further views, comments and suggestions on the cases, contents and further improvement of the newsletter. Furthermore, if you would like any other information from the legal world to be made available to you, please do write in to us on info@sumankhaitanco.in

Happy Reading!

With warm regards,

(Suman Jyoti Khaitan)
Editor

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ARBITRATION:

- In Director General Central Reserve Police Force v. Fibroplast Marine Pvt. Ltd.,[1] the Hon'ble High Court of Delhi ruled that inordinate and unexplained delay in rendering the award makes it amenable to challenge under Arbitration & Conciliation Act, that is, being in conflict with the public policy of India.

- In New Eureka Travels Club v. South Bengal State Transport Corporation,[2] the Hon'ble High Court of Calcutta held that neither an interested party can be appointed as an arbitrator, nor the said party can appoint an arbitrator to decide disputes between parties.

- In Millennium Education Foundation v. Educomp Infrastructure and School Management Limited[3], the Hon'ble High Court of Delhi held that if the petition filed before the NCLT is admitted and moratorium comes into play, the legal consequences of the same would automatically apply to the proceedings under the Arbitration Act. So long as the petition is merely pending and not admitted and no moratorium has commenced, there can be no embargo on the proceedings under the Arbitration Act and on the petitioner seeking reference of disputes and appointment of an Arbitral Tribunal.

- In Sh. Sanjay Roy v. Sandeep Soni & Ors.,[4] the Hon'ble High Court of Delhi held that an arbitral award that is not in consonance with judicial decisions and principles laid down by Indian courts would be violating the fundamental policy of Indian law and hence in conflict with the public policy of India and can be challenged under the Arbitration and conciliation Act, 1996.

- In M/s Sat Kartar Tour N Travels v. Oil and Natural Gas Corporation Limited,[5] the Hon'ble Delhi High Court in its order held that an order passed by the Arbitrator allowing the arbitral proceedings to be conducted at any other place would not change the seat of Arbitration as provided in the Arbitration Clause.

[1] 2022 LiveLaw (Del) 419.
[2] AP/244/2022.
[3] ARB.P. 326/2022.
[4] FAO(OS) (COMM) 92/2022.
[5] ARB.P. 772/2021

INSOLVENCY AND BANKRUPTCY:

- In Saraf Chits Private Limited & Anr. v. KAD Housing Private Limited,[6] the National Company Law Tribunal, New Delhi Bench, in its order held that Corporate Insolvency Resolution Process against a Corporate Debtor cannot be initiated/triggered solely on the basis of the un-paid amount of interest where the entire principal amount has already been discharged by the Corporate Debtor.

- The National Company Law Tribunal, New Delhi Bench, initiated Corporate Insolvency Resolution Process against National Textile Corporation Ltd. in the matter of Hero Solar Energy Pvt. Ltd. v. National Textile Corporation Ltd.[7]

- In Star India Private Limited v. Advance Multisystem Broadband Communications Limited,[8] the National Company Law Tribunal, Kolkata Bench, in its order held that a transaction cannot be alleged to be preferential, fraudulent, or avoidable unless material facts have been stated as to why such transaction would be covered under Section 45, 46, 47 and 66 of the Insolvency and Bankruptcy Code, 2016.

- In Kotak Mahindra Bank Limited v. A. Balakrishna and Anr.,[9] the Hon'ble Supreme Court held that the holder of Recovery Certificate can initiate the Corporate Insolvency Resolution Process as financial creditor within a period of 3 years from the date of issuance of Certificate.

- In Ashish Chandravandan Patel v. Axis Bank Ltd.,[10] the National Company Law Appellate Tribunal, Principal Bench, in its Order held that temporary unavailability of a member to sign the Order is not a ground for fresh hearing if the Order was passed with the consent of such member.

INDIRECT TAXATION:

- The Central Board of Indirect Taxes and Customs (CBIC) vide Instruction No. 1083/04/2022-CX9 dated 23.05.2022 has issued Standard Operating Procedure (SOP) for National Company Law Tribunal (NCLT) cases in respect of the Insolvency and Bankruptcy Code. In the interest of protection of government revenue and to make the entire process smooth and effective, CBIC has nominated the Additional Director General, DGPM as the Nodal Officer for the CBIC for the receipt of information regarding initiation of the insolvency resolution process and dissemination of the

[6] (IB)-255(ND)/2021.
[7] C.P. No. IB-452/ND/2020
[8] C.P. (IB) No. 1510/KB/2018.
[9] 2022 SCC OnLine SC 706.
[10] Company Appeal (AT) (Inolvency) No. 618 of 2022.

same to the field formations for necessary action at their end in terms of the provisions of the Insolvency and Bankruptcy Code, 2016.

- The Central Board of Indirect Taxes and Customs vide Notification No. 07/2022- Central Tax waived the late fees for delayed filing of GSTR-4 from May 1, 2022, till June 30, 2022.

- In Sanjib Das v. Union of India and Ors.,[11] the Hon'ble Gauhati High court held that circulars issued by the Central Board of Indirect Taxes and Customs which only clarify the CBIC's original instructions and do not bring anything new operated retrospectively.

DIRECT TAXATION:

- On 11.05.2022, The Central Board of Direct Taxes (ITA-II division) issued guidelines for compulsory selection of returns for Complete Scrutiny during the Financial Year 2022-23 and procedure for compulsory selection in such cases.

- In Shri Aniket Agarwal v. Income Tax Officer,[12] the Income Tax Appellate Tribunal, Delhi Bench in its order held that in case of an individual earning income from salary who has deposited an amount of up to Rs 2,50,000 during demonetization period, no further verification is required as per the Central Board of Direct Taxes (CBDT) Instructions.

INTELLECTUAL PROPERTY LAW:

- In Colorbar Cosmetics Private Limited v. Faces Cosmetics India Private Limited,[13] the Hon'ble Delhi High Court in its order restrained Faces Cosmetics, a Canada based company, from selling and manufacturing products under the mark 'Velvet Matte' and granted ad interim ex parte injunction in favour of Colorbar Cosmetics Private Limited.

- In Sholay Media Entertainment and Anr. v. Yogesh Patel and Ors.,[14] the Hon'ble Delhi High Court has held that titles of films are capable of being recognized under the Trademark Law, and the word 'Sholay' cannot be held to be a mark devoid of protection being the title of an iconic film.

- In the trademark infringement suit filed by PUMA[15], the Hon'ble Delhi High Court directed Google LLC to remove the application 'PUMA GUARD' from its Google Play Store.

[11] WP(C)/2565/2022.
[12] ITA. No. 627/Del/2021.
[13] CS(COMM) 228/2022.
[14] 2022 LiveLaw (Del) 501.
[15] PUMA SE v. HI-TEC Point Technologies P. Ltd. and Ors., CS(COMM) 137/2021.

- In Burger King Corporation v. Swapnil Patil & Ors.,[16] the Hon'ble Delhi High Court in its order granted ex-parte ad interim injunction in favour of Burger King. The defendants are restrained from advertising, offering goods or services, using, or registering corporate names, domain names, or pages bearing trademarks Burger King, BK, or any other deceptively similar to the plaintiff's trademarks.

- In Kerzner International Limited v. Vikas Aggarwal & Ors.,[17] the Hon'ble High Court of Delhi in its Order granted injunction in Kerzner International against Vikas Aggarwal for using the mark 'Atlantis Park Ballroom' in respect of a banquet hall.

MERGER AND ACQUISITIONS:

- Mindtree and L&T Infotech have announced a merger subject to shareholder and regulatory approval and the name of the combined entity will be "LTIMindtree".

- US-based Southco Inc. has acquired Darshana Industries Pvt. Ltd., which is headquartered in Pune, for 50 million dollars.

- Adani Wilmar Limited announced the acquisition of renowned Basmati rice brand 'Kohinoor'. The acquisition would further strengthen Adani Wilmar's leadership position in the food Fast-Moving Consumer Goods (FMCG) category.

SECURITIES AND EXCHANGE BOARD OF INDIA

- On 06.05.2022, The Securities and Exchange Board of India via press release No. 15/2022 constituted a committee for advising on Environmental, Social and Governance (ESG)-related matters in the securities market.

- NSDL Database Management Limited (NDML), a wholly owned subsidiary of National Securities Depository Limited (NSDL) has been granted recognition as an Accreditation Agency under Regulation 2(1) (aa) of SEBI (Alternative Investment Funds) Regulations, 2012 read with SEBI circular dated August 26, 2021, for a period of 3 years with effect from May 10, 2022.

[16] CS(COMM) 303/2022.
[17] 2022 LiveLaw (Del) 465.

COMPETITION:

- The Competition Commission of India via Press Release No. 08/2022-23 approves acquisition of shareholding in Hitachi Construction Machinery Co., Ltd. by HCJI Holdings G.K., Citrus Investments, HCJ Holdings 2 G.K., Japan Industrial V – GP K.K., and other investors.